

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
Civil Action No. 7:15-cv-38-BR

Ian S. Gottlieb,)	
)	
Plaintiff,)	
)	
v.)	DEFENDANT ERICA F. GOTTLIEB'S
)	MOTION TO DISMISS
Eric T. Schneiderman,)	
Ellen F. Gesmer, and)	(Fed. R. Civ. P. 12(b)(1) and (6))
Erica F. Gottlieb,)	
)	
Defendants.)	

NOW COMES Defendant Erica F. Gottlieb, by and through undersigned counsel, and pursuant to Federal Rule of Civil Procedure 12 (b)(1) and (6), respectfully moves the Court for an Order dismissing Plaintiff's Petition for a Writ of Habeas Corpus and Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202, for the reasons that the Court lacks subject matter jurisdiction and Plaintiff fails to state a claim upon which relief may be granted. In support, the undersigned shows unto the Court the following:

1. The undersigned counsel for Defendant Erica F. Gottlieb represented her in the custody action initiated by Plaintiff in the District Court for Pender County styled Ian S. Gottlieb v. Erica E. Gottlieb, File No. 11 CVD 613, from August, 2011 through April 2, 2013. Plaintiff describes how he initiated that action on July 8, 2011 on page 16 of his Petition for Declaratory Judgment. The final Order entered by the Honorable Judge James H. Faison, III was entered on April 2, 2013 *ex parte*, enforcing terms of an Order entered Defendant Ellen F. Gesmer, the Judge presiding over the custody action in New York.

2. This action is similar to the action Plaintiff filed before this Court on March 22, 2013, in Ian S. Gottlieb v. Judge Ellen Gesmer, Jo Ann Douglas, and Honorable James Faison, III, Case #: 7:13-cv-00049-BR. This Defendant refers the Court to the Orders entered therein. That action was closed with an Order granting Mr. Gottlieb's Motion to Dismiss, entered on May 22, 2013.

3. Plaintiff filed his Petition for a Writ of Habeas Corpus on February 18, 2015, and his Petition for Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201, 2202 on June 17, 2015. He did not obtains Summonses against the Defendants until July 9, 2015. He has not informed this Court of the two Final Order[s] of Custody After Trial entered by Defendant Hon. Ellen Gesmer on June 16, 2015, copies of which are attached hereto as **EXHIBIT A**. Both Orders note in the opening paragraph the following:

After litigation in North Carolina and New York regarding custody jurisdiction, both jurisdictions determined that New York is the Children's home state, and has custody jurisdiction (*Gottlieb v Gottlieb*, 103 AD3d 593 [1st Dept 2013]).

The longer of the two Orders is 20 pages long and describes in exhaustive detail the custody trial, which was spread out over 21 days beginning February 25, 2014 and ending February 18, 2015.

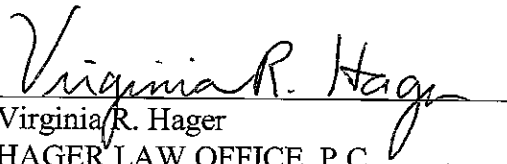
4. Plaintiff has not appealed the Orders entered by Defendant Judge Gessmer on June 16, 2015.

5. Plaintiff asserts in his Petition for a Writ of Habeas Corpus that Defendant Erica F. Gottlieb's removal of the children from his physical custody on April 2, 2013 was "unlawful." Said Defendant refers the Court to the Order entered by Judge Faison that day which directed local law enforcement officers to assist her in picking up the children from the Plaintiff, in order to enforce the Order to Show Cause entered by Defendant Judge Gesmer on March 29, 2013, which gave Ms. Gottlieb interim custody of the children. A copy of said Order is attached hereto as **EXHIBIT B**.

6. Plaintiff initiated the North Carolina custody action just one day after he and his mother surreptitiously brought the children to North Carolina from New York. To this day he has never explained why he did not initiate his custody action in New York, as clearly New York was the children's home state at that time. Plaintiff repeatedly sought to have the District Court for Pender County assert jurisdiction over custody of the children, which the Court repeatedly refused to do, culminating in the Order entered on February 22, 2013, a copy of which is attached hereto as **EXHIBIT C**. Said Order includes terms of a pre-filing injunction or "gatekeeping order," entered by the Court *sua sponte*.

WHEREFORE, Defendant Erica F. Gottlieb respectfully moves for an order dismissing Plaintiff's Petitions, and further, requests that the Court consider entering its own pre-filing injunction against the Plaintiff in light of his history of filing frivolous federal actions and motions in North Carolina state court, when it should be clear to him that the New York court is the only court with jurisdiction to consider claims related to custody of his children.

This the 2nd day of September, 2015.

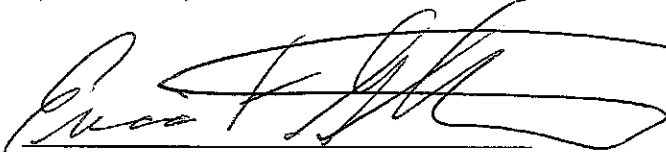

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State Bar No.: 17300
Attorney for Defendant Erica F. Gottlieb

STATE OF NEW YORK
COUNTY OF SUFFOLK

VERIFICATION

ERICA F. GOTTLIEB, being first duly sworn, states that she is the Defendant in the foregoing cause of action, that she has read the foregoing Motion to Dismiss and knows the contents thereof, that the same is true of her own knowledge and belief, except as to those matters and things therein stated upon information and belief and, as to those, she believes them to be true.

This the 31st day of August, 2015.


ERICA E. GOTTLIEB


STATE OF NEW YORK
COUNTY OF Suffolk

I, a Notary Public for said County and State, do hereby certify that ERICA E. GOTTLIEB, being personally known to me or proven by satisfactory evidence by current state or federal identification with the principal's photograph in the form of a driver's license, personally appeared before me this day, and acknowledged the voluntary due execution of the foregoing instrument by her for the purposes stated therein.

Witness my hand and notarial seal this the 31st day of August, 2015.

EDWARD GEORGE MICHEL
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN SUFFOLK COUNTY
REG. #01MI6222816
MY COMM. EXP. 08/18/2018

Edward G. Michel
NAME OF NOTARY PRINTED


SIGNATURE OF NOTARY PUBLIC

My Commission Expires: 8/18/2018

CERTIFICATE OF SERVICE

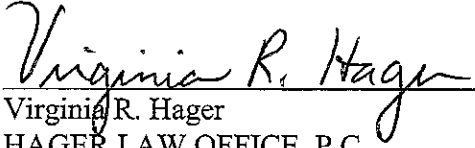
I do hereby certify that on ~~August~~ September 2, 2015, I electronically filed the foregoing Motion for Extension of Time to Respond, EXHIBIT A to the Motion, and the accompanying proposed Order, and that the CM/ECF system which will send notification of such filing to the following:

Michelle R. Lambbert
Assistant Attorney General
120 Broadway, 24th Floor
New York, NY 10271

and further, that I served a copy of the same on the Pro Se Plaintiff via regular U.S. Mail, postage prepaid, addressed as follows:

Ian S. Gottlieb
796 Washington Acres Rd.
Hampstead, NC 28443

This the 2nd day of ^{September}~~August~~, 2015.



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